

**Community Preservation Advisory Committee
September 24, 2003
9:00 am – 3:30 pm
State Capitol Room 437
Meeting Summary**

Attending:

Sen. Lynn Bromley (Chair), Cumberland County
Rep. Ted Koffman (Chair), Bar Harbor,
Southwest Harbor, Mt. Desert Island
Sen. Tom Sawyer, Penobscot County
Rep. Janet McLaughlin, Cape Elizabeth
Rep. Peter Mills, Skowhegan, Cornville
Rep. David Tobin, Windham
Ed Suslovic, community development consultant
and former Realtor
Peter Merrill, Maine State Housing Authority
Beth Della Valle, State Planning Office
Mike Johnson, Maine Historic Preservation
Commission

Absent Committee Members:

David Holt, Town Manager, City of Norway
Jeff Sosnaud, Maine Audubon (Board)

Additional Attendees:

Liz Rettenmaier, SPO (committee staff)
Susan Johannesman, Office of Policy and Legal
Analysis (committee staff)
Jim Adolph, Office of Policy and Legal Analysis
Doug Rooks, House Speaker's Office
Kathy Fuller, MDOT
Peggy Schaffer, DECD
Martha Freeman, SPO
David Keeley, SPO
John DeVecchio, SPO
Mary Ann Hayes, SPO
Jeff Austin, Maine Municipal Association
Holly Baldwin, Maine Affordable Housing
Network
Ray Bergendoff, GrowSmart Maine
Jennifer Burns, Maine Audubon
Alan Caron, GrowSmart Maine
Jodi Castallo, Maine NEMO
Elliott Chamberlain, Chamberlain Construction
Rich Cromwell, The Modular Advantage
Ginger Davis, MEREDA
Jeff Edelstein, Building Code Working Group
Mary Ann Gleason, York County Initiative to End
Homelessness
Chris Hall, Maine Chamber of Commerce
Rod Melanson, Friends of Midcoast Maine
Theresa Savoy, Coastal Enterprises Inc.

Introduction and Welcome

Introductions by Committee members and attendees. Introduction and welcome by the Committee Chairs, Sen. Bromley and Rep. Koffman. In addition to the interests of the individual members in the work of the committee, several members echoed the importance of the Committee in providing a venue for the "cross-colonization" of ideas across disciplines, and the need to think about the way impacts move across areas – and ways to create change.

The CPAC Affordable Housing Subcommittee

LD 472 (Resolve Chapter 73) passed the Legislature last session as a compromise bill, aggregating aspects of several bills addressing affordable housing in Maine. The bill directed the Community Preservation Advisory Committee (CPAC) to study issues pertaining to affordable housing, specifically to "undertake a comprehensive study to identify regulatory and other barriers to the creation of affordable housing in the State. For each barrier identified, the committee shall make recommendations on ways to reduce that barrier and to provide incentives for the creation of affordable housing." If there are legislative recommendations that come out of the subcommittee, CPAC is authorized to submit legislation through the Business, Research, and Economic Development Committee in the 2nd Session. The report from the committee is scheduled to be included in the CPAC Annual Report, issued by December 1, 2003.

The Resolve also directed CPAC to consult with a listed set of 21 stakeholders “during this study and in the development of all its recommendations.” (A copy of the Resolve is on the CPAC website.) Because of the number of mandated stakeholders, there is a subcommittee being formed to meet the mandate; the subcommittee will have 4 meetings this fall and report back to the full CPAC with its recommendations. Sen. Tom Sawyer and Mary Ann Gleason will be co-chairing the subcommittee. John Delvecchio of the State Planning Office will be providing staff support to the subcommittee. Mary Ann Gleason gave an introduction to the work of the committee. Their first meeting will be Friday, September 26th in Augusta. Additional meetings are scheduled for October 22nd, November 12th, and November 19th. Frank O’Hara will facilitate the last three meetings, with support from the Maine State Housing Authority. A list of members and draft agenda for the first meeting was also distributed to the Committee. CPAC members (and other interested parties) are welcome to attend the meetings of the subcommittee.

The subcommittee will be primarily focused on suggestions and solutions, moving beyond identification of barriers that are generally well known.

CPAC Members commented:

- Although the focus of this study resolve is affordable housing, the CPAC will have to think about this in a broader context and with awareness of relationships and impacts across disciplines. By encouraging developing affordable housing, we should not be increasing sprawl.
- Issues around affordable housing are much broader than subsidized or Section 8 housing. Concerns around lack of available “workforce” housing must also be addressed for families that need “start up” houses and the working residents of towns.
- Design issues should also be considered by the subcommittee – mixed income, mixed use, compatibility with the community.
- A mix of strategies and suggestions – some incremental and some far-reaching would be an appropriate outcome of the subcommittee.
- Jim Brown, who recently resigned from CPAC might be a good addition to the subcommittee. He’s the Director of Economic and Community Development for the City of Presque Isle.

Contact John Delvecchio at john.delvecchio@maine.gov for more information.

The Challenges of Building The “Great American Neighborhood” in Maine

The concept of the “Great American Neighborhood” is a reflection of the traditional New England village center. “Great American Neighborhoods” tend toward six characteristics:

- Walkability;
- A civic core;
- Neighborhood boundaries that join together 2 or more neighborhoods and are meeting places;
- Protection from excessive traffic and traffic noise;
- Human scale; and
- A public-private continuum.

Although there are several historic villages and towns in Maine that can be described as Great American Neighborhoods, developers have been challenged by local ordinances and NIMBYism (“Not In My BackYard”) to be able to recreate this pattern of development. Elliott Chamberlain, of Chamberlain Construction, and Rich Cromwell, of The Modular Advantage, presented their experiences before the Committee.

Rich Cromwell is a homebuilder in Brunswick. He is in the process of building “Topsham Crossing”, a somewhat modified “Great American Neighborhood.” It is “somewhat modified” because the local planning board would not consider his original proposals, so he is building according to the maximum density allowed under the current zoning.

Elliott Chamberlain is an owner of Chamberlain Construction and ALT Development with his brother. The company is trying, thus far unsuccessfully, to develop a Great American Neighborhood (GAN) in Scarborough. Elliot was introduced to the GAN concept by Evan Richert (former SPO director) in 1997, or so. They have been working on the Scarborough project since 2000, and have recently entered into a lawsuit against the town to allow this project to go forward. The State has a law that permits towns to do a comprehensive plan, and Scarborough has a comprehensive plan adopted in 1994. Our project fits their comp plan to a T in their ideas of a village compact. Our project is about 400 units, within 3 miles of 2 exits of the Turnpike, has utilities and services, etc. We were also going to donate \$1m to the town of Scarborough for conservation. The Scarborough land trust supported the plan; they would have been involved in the conservation. The land slotted to be taken off of the development rolls would have offset the traffic contribution, etc. The project was going to have a diversity of uses, provide more affordable housing (affordable by Scarborough standards), with shops, trails, and open space. The project would have been a profit for the town, even with the increase in the number of school-aged children. The creation of open space would have benefited the town and the region. Transportation upgrades as part of the project would have addressed an issue that has existed since the 1960s. The project, nearly 400 units, would have been built-out over approximately 15 years, with a final average density of less than three units per acre (less dense than the town's R-3 zone).

Rep. Koffman noted that there may be a gap in state policy if a town can adopt a comprehensive plan and have it approved by the State Planning Office, and then not follow through on adopting ordinances to reflect that plan. For example, if a town has a state-approved, locally adopted comp plan, but has not developed ordinances, could the plan have more weight? Or, if a project was facing a late-coming challenge, there could be a statewide board of appeals, akin to the board proposed in LD 2099? If we're talking about the larger context, if good governance isn't taking place, and the state has approved the comp plan, there ought to be some protection for folks that are working in line with that plan.

Elliott added that if SPO had some legal means to tell the town they had to update their zoning, a lot of these conversations wouldn't be happening. Under current state statute, if a town is not following their comprehensive plan or updating their ordinances, developers (or others) have no means to seek redress in the courts until a project is proposed and is denied (creating "standing" in the courts) – after the investment of significant time and resources.

Beth Della Valle commented on the size of the project relevant to the build out time. This project would have been about 26-27 units per year; Scarborough has been experiencing growth of 200 units per year over the past several years. The town now has a cap now of approximately 90 units/year – this is even a small part of that. State statute says that the town is required to have updated/implemented their zoning ordinance (if called for in the comp plan) within 2 years of adoption. Scarborough should have had that in place by 1996 or 1997. But, the State Planning Office (SPO) is not an enforcement agency. Some aggrieved party, typically in the development community, would have to challenge the ordinance in court; the court would look to statute (the transition savings clause) and find that the town is not implementing ordinances that are consistent with their plan. The only body that can do this is the court, under current law. If you're looking at requiring towns to submit their ordinances (right now only voluntary), there will be resource limitations to address at SPO. We are not required to review ordinances because of changes in law a couple years ago.

Rep. Suslovic noted that throughout the process, there was a well-designed and implemented plan for involving the community in the planning of the development. There were a series of widely publicized public forums, more than 500 invitations sent out, etc. The neighborhood actually designed the development. Three teams of community members and neighbors came up with three plans; the developers pulled them together and went back to the community for feedback. When there were changes, the developers went back to the community to check back in. It's important to recognize that there was a "smart process" to go along with this "smart growth" project.

The town has a comprehensive plan which describes the village compact area they desired for that area of town, but have not updated their zoning ordinance to reflect the comprehensive plan. The town council issued a legislative finding that the proposal was consistent with the comp plan, even though the land use

was not consistent with current zoning. The developers worked to get a contract zone approved for the project, a two-year, nine-step process. It was approved in June by 5:1 by the City Council, and then overturned by a public referendum in July.

Opposition focused on the number of school children the project would bring, although the Chamberlains produced expert reports that the local schools needed the children the project would bring. Traffic concerns were also addressed in expert analyses and reports, but those against the project didn't believe them.

Rep. Tobin noted that it is much harder to overturn a project in an overlay zone (such as a compact village overlay) than a project approved through contract zoning. An overlay zoning decision would have to be challenged in court, not through a public referendum.

Beth Della Valle noted that in Maine's constitution there is not a distinction between local legislative and administrative actions. Some states differentiate the two types of actions, allowing legislative actions to be challenged by the public, but not administrative actions. The question of whether permitting a contract zoning change is administrative or legislative is another question.

This project was stopped by upset town residents who didn't want it in their back yard. If this project fails, other developers will be scared off. There are more developers willing to build "Great American Neighborhoods" if they are allowed to.

Starting at the state level, and moving locally, we need to address this issue. We need to have projects that are of a regional and local benefit move forward.

Sen. Sawyer commented that the way to get to these developments is to remove disincentives, rather than providing incentives.

Elliott Chamberlain agreed; developers don't need incentives, it's the barriers that are an impediment. The timeframe needs to be shortened, the process more predictable, risks reduced. Currently, the only way to get most of these projects built is through contract zoning, which takes too long and is too much at the whim of opposition to overturn at the last minute, after significant investment of time and resources (by everyone). Incentives should be directed toward the towns, not the developers, to address concerns regarding school and transportation impacts. Rich Cromwell added, however, that encouragement for these projects from State agencies needs to be done carefully to avoid the perception of the State forcing a project down onto a municipality.

Rep. Tobin reminded the Committee of their work last session, putting forward and supporting a bill authorizing the use of TIFs for affordable housing. The money generated by those TIF programs could be used to address local impacts on schools.

Rich Cromwell bought the beginning of Topsham Crossing in 1999; it was a mobile home park that was part of an overlay district. At the time, there were 4 manufactured housing overlays in the town – 1 was sold, 2 were undevelopable, and Rich's acquired property was the only one left. Nevertheless, the town and neighbors were strongly opposed when Rich proposed additional manufactured housing units. Thinking about GANs, he started purchasing adjacent properties. Topsham Crossing was started with much less organization than the Chamberlain Brothers. Eventually, he found outside support was available and worked with John Delvecchio of the State Planning Office, held local charrettes, worked with a landscape architect, got a professional planner involved.

The project developed would have required a zoning change. After spending some resources and a couple of years on the project, the Planning Board voted not to even consider the processes involved to get a zoning change. With that in mind, he adjusted the project to follow current zoning restrictions exactly, not requiring any variances or zoning changes. If the town was going to deny it, he was ready to go to court. That project was approved, although it does not include key elements that could make it a

“Great American Neighborhood” – especially incorporating multifamily housing units and some local commercial aspect to the project – because it is not allowed under the current zoning ordinance.

The project has five units built, and 15 sold. The first unit is being occupied this weekend. Rich is hopeful that once the neighbors see the development working, the neighbors, council, and planning board will have enough courage to complete this project as originally envisioned.

Rich received a Maine State Housing Authority (MSHA) infrastructure grant for \$100,000 for making 30% of the houses affordable in Phase 1 or two of the development. This was very important for moving the project forward. There is another community in Maine where he has an option to build a 22-lot existing subdivision that hasn't been able to be built because of high infrastructure costs. That property is near the local high school, near the downtown. A month after a court decision ordered the town to accept that 22-unit subdivision, the town adopted ordinances with a 3-lot per year restriction on subdivision development.

“Any developer that starts a project, even with a gut feeling or strong indications from the council or planning board that it would work, if a zoning change or something similar (contract zoning) is required, you really haven't started the process until you have that done. You're wide open to referenda, NIMBYism, etc. We met with a ton of NIMBYism. At one point, they were considering having police protection at the planning board meetings. After final approval, the opposition did try to organize an appeal, had 132 signatures, but the town didn't accept it. The people that organized the neighborhood uprising were the people that had attended my charrette, which was an interesting turn.”

There were also challenges in finding the best data. The data about the number of school children generated by new development is flawed. Rich demonstrated those flaws in Bowdoinham. He conducted two studies on the school system in Topsham. Approximately 1 child/household is produced in neighborhoods like mine, not 2.3. The premise that local schools were overcrowded was also wrong. There was a bubble moving through – by the time Topsham Crossing came online, there would have been a deficit of kids. The Planning Board refused to accept the study. We had the same issue with a traffic study. We got sent back and repeated the studies, and the Board wouldn't accept them. We need to move forward with better data for the planning boards, but boards aren't accepting them; there is an institutionalized NIMBYism within some local governments.

Rich volunteered to demonstrate, for the Committee, the economic benefit of new houses in three communities in Maine, taking into account the impact on schools, etc.

Sen. Sawyer enquired if there was a way for towns and neighbors to tell the “good” developers from the “bad” ones. Elliott Chamberlain responded that from a town's perspective, it doesn't matter if a developer is a “good guy” or a “bad guy” – it only matters if the project is a good project for that town or not. Rich added that there is a different level of experience and expertise needed to do a 3-5-unit subdivision and a larger project. For the larger projects, bonding is required, letters from creditors, subcontractors that will be paid for millions of dollars of projects, support from banks, etc. If the developer is willing to use high density, GAN principles, and include affordability, you're probably on pretty safe ground on trusting the project.

Each of these projects is large enough to have been considered a regional solution to a regional problem of availability of affordable housing. Rep. Suslovic asked about the Chamberlain's and Rich Cromwell's experience with regional entities. Elliott Chamberlain responded that regionalism is brought up a lot, but there is nobody doing it. Municipal boundaries are sacrosanct. PACTS, the Metropolitan Planning Organization for the greater Portland region contributed to the transportation studies; Greater Portland Council of Governments was not engaged in the project.

Beth Della Valle noted that there is no regional entity whose governing body crosses municipal boundaries (GPCOG's governing body is made up of municipal representatives).

Rep. Suslovic added that one of the reasons comp plans end up on the shelf is because they don't go beyond their own municipal border. Also, volunteers put a lot of energy into writing plans, and it exhausts them. They're burnt out by the time it gets to implementation.

Rep. Tobin suggested greater training of planning boards would help members understand the correct enforcement of local ordinances. Rep. McLaughlin added that it is not just planning board training, but planning staff time and resources that are critical. Sen. Sawyer recommended that planning boards be reminded of their fiduciary responsibilities as representatives of the municipality.

Beth Della Valle commented to the Committee that there is little case law about land use issues in Maine, relative to other states. In part, this is because development pressure isn't high enough; developers are typically small developers, not high-rollers or national developers; the pockets are not deep enough to absorb the risks and costs. Even in the legal field, very few attorneys specialize in land use law in Maine. Beyond that, making land use policy through the courts is a terrible way to make policy. The courts are bound by a set of rules that turn on where commas are in statute, technical issues would be decided by people that are not in that profession. If we are going to look to the courts to decide cases on day-to-day decisions, we will drive up the cost of development in Maine, because it will become very difficult for the private sector to produce a product for a price that people in Maine can afford to live in.

The CPAC Mandate to Examine SPO's Comprehensive Plan Review Process

Resolve Chapter 34, passed by the legislature last session, directs CPAC to "study the Executive Department, State Planning Office's review of municipal comprehensive plans, growth management programs and local ordinances for consistency with state goals. The study must include a review of the rules governing the State Planning Office's review and the time frames for the State Planning Office's review." The Committee is permitted to submit any legislation during the next session through the Natural Resources Committee, and to include its findings in its annual report (due December 1, 2003). (A full copy of the resolve is available on the CPAC website.)

Beth Della Valle provided some background information to the Committee. The original legislative proposal would have mandated that any review that was late from the State Planning Office would be deemed automatically consistent with state goals and law. That would have probably ended up in court, had it passed. The land use team at SPO does a lot more than simply review plans; it manages a grant program, provides technical assistance to communities, creates technical assistance materials, works with state agencies, coordinates with regional councils, etc. Many of these are activities that are mandated in statute. We also recognized this issue prior to LD 1045 coming forward and is, in fact, in our four-year evaluation provided to the NR committee earlier this year. Beth provided handouts of the relation of comp plan reviews to other SPO and state agency programs, an excerpt from "We Have a Choice" (the four-year evaluation), the language of Resolve 34, Beth's testimony to the Natural Resources Committee on the original LD, and a memo summarizing her talking points.

There are six staff, including myself, in the land use team, four Senior Planners, one Planner II and a Policy Development Specialist (Beth). There are issues both in terms of workload and compensation. A Planner at the town level with five years experience is making as much as I am; we have had a 67% turnover in staff in the last four years, not unrelated to that issue.

We have created a system that has local plans and ordinances at the center of our planning universe. (handout) The upper part of this page is the statutory language that are linked to that consistency – growth related capital investments, state office building siting, grant preferences, state investments. The bottom focuses on all the regional linkages. The hatched part is what is missing: regional land use plans, regional investment schemes. For example, in thinking about the casino, there is no regulatory structure in the state that allows us to deal with the regional impacts that are non-environmental and non-traffic. We can get cooperation from the developer, but there's no way to have that developer pay for those impacts. Another concern is that there is no specific requirement for state coordination with a regional land use or investment plan developed by entities within a region.

Areas that Beth recommended that CPAC consider in trying to solve this issue:

- Adjustment of the statute where the statute is vague or creating administrative burden for towns, regional councils, SPO, other agencies, etc.;
- Further coordination of state and regional efforts;
- New systems for delivery of services – how can we do a better job with less effort? How can we modify the review process so that it takes less of our time for the review process? For example, if we spend more time with towns during the process, it might not be a net gain in time, but we might get a better result. Shifting our attention from writing theses to having a more perfunctory set of review comments and spend the time face-to-face with town along the planning process may be one approach. Another is coordinating the administrative pieces around grant preferences, etc. We're trying to engage partners to help us think of creative ways to improve business.;
- Identifying partners that can take on some of the things we have historically done; and
- Additional resources.

SPO has been taking several steps to address the issue of timeliness already. We have taken some steps administratively to modify our steps around reviews. Some are still going out late, but they're going out a lot faster – a couple of days or weeks rather than months late. We've also had a 296% increase in the number of plans we're doing. Last year we reviewed less than 20 plans; we expect to review 50 by the end of this year. This summer, we've moved 1-3 plans out a week.

Rep. Koffman requested that SPO project their review load over the next three years based on current grants and age of plans across the state.

SPO has also been engaging in a retooling of the growth management program. It started last year with Mary Ann Hayes and 38 people across state agencies (the interagency comprehensive plan partnership working group) that have become reengaged in the growth management act in providing review comments and providing data to towns up front in the comp planning process. That group is moving into a major rulemaking effort that Mary Ann will address.

Beth will assemble a subcommittee, to include at least Rep. Tobin, Rep. Suslovic, and Rep. McLaughlin, to assemble recommendations for CPAC to consider, including statutory changes, directions on rulemaking, priority setting.

Transportation and Land Use Coordination

The 121st Legislature also passed "An Act to Enhance Integration of Transportation and Land Use Planning" (Chapter 22), a bill originally proposed through CPAC. The law calls for rulemaking by the Maine Department of Transportation (MDOT) to adopt a rule that establishes linkage between the planning processes in the Sensible Transportation Policy Act (STPA) and the Planning and Land Use Regulation Act (PLURA). The bill also called for a series of incentives that reward communities for doing good planning. There is a MDOT internal working committee that includes Mary Ann working on this. I have started thinking about introducing these amendments in context of the existing STPA. STPA is a law says that MDOT and the Maine Turnpike Authority (MTA) will plan in these ways... There is an element that says that the regional planning agencies should do what MDOT does. There is currently no role for municipalities and regional councils in the STPA. So, maybe we should fill that gap. When MDOT makes its transportation investment decisions, it has to consider local comprehensive plans. There is no alternative directive to municipalities that when they are developing comprehensive plans that they have to consider state investment planning. We're trying to bridge that gap.

The rule changes proposed will include filling in the holes that involve municipalities and what they should address in transportation chapters of a comprehensive plan, but there will also be some housekeeping legislative changes to bring STPA up to date.

The goal is for MDOT to have a public hearing on these rules by mid-December at the latest, with a full public comment period in January; and then repackage and get to the legislature in February/early March. In addition to the rules, it's important that we create a guidebook, a how-to. There are only a few

resources in the country on how to link transportation and land use; it's still very new. We're working on that as well. We're hoping to work with Evan Richert on that effort. We hope that along with these rules we can create a grant program that could augment SPO's grants, particularly targeted to transportation within the comp plan. If SAFETEA (federal legislation, the next generation of TEA-21) passes, there is potential for a national pilot program that offers grants to municipalities to integrate land use and transportation. We're looking at making data more meaningful, provide regional information/context.

Finally, one of the ways MDOT is thinking of creating the glue – we're going to provide some best practices or performance measures in our product to give towns something to aim for. MDOT already uses a tool to create partnerships with municipalities – memoranda of agreement or understanding. We think there may be a possibility from the planning side of the equation for towns to enter a MOU when they have a plan that's consistent, and that changes to that consistent plan needs some oversight or examination of impact.

The State Planning Office has been working more closely with MDOT and other state agencies since last December to streamline and improve the information we're getting to towns. With this working group, state agencies have been interested and willing to do a better job to integrate with the regional and municipal level. As a result, collaboratively we have produced a new resource package that includes data and technical assistance materials. It includes CDs with the geographic data and software to use it. It went to 49 communities in July, and there are another 35 towns that have requested it in October.

This working group is also updating the 1992 comprehensive planning manual with agency input on all their areas. MDOT is talking about going further with in-depth guidance/companion to the overall manual. We're trying to get this integration so that if there is a state law on phosphorous control, that there's integration with planning and land use regulation. We're working with the agencies to clarify their mission, their policies, and mandates and find how that meshes with a community with a comp plan process – surfacing the issues at the end rather than the beginning... We're working to build the linkages early, start the conversations at the beginning of the process rather than at the end.

The third piece is revising our rules, both substantive and procedural. (Handout) There are a couple of things that we think may need statutory clarification/addressing. For example, the term of consistency – towns are working against their best interest to submit an updated plan if their old plan is consistent.

Rep. Suslovic expressed frustration over the resources put into comprehensive planning over the years and the relatively minor outcomes seen. Many of the problems, such as affordable housing, are not being adequately addressed.

Beth Della Valle responded that it is worth trying to fix the comp planning process, which includes more than just the review timetable. Greater accountability is needed for towns that adopt comprehensive plans, the regional issue must be addressed. The approach the state has taken, a ground-up, rather than top-down, approach takes time. The most successful model in the country is Oregon and it took them 25 years to show success with a very well funded, top-down program. If you look at the other programs, such as Maryland, they're used fiscal tools very effectively, but they're not a model development pattern that Maine would want to emulate. They're experiencing different pressures; but also they're doing fiscal management without planning. If we can bear this out and fix the shortcomings, our program will be far more successful in both addressing the fiscal issues and in having good planning. I would encourage not throwing the baby out with the bathwater, but there may be some fundamental retooling needed.

Kathy Fuller (MDOT) noted there have been very few, if any, real incentives for communities to implement their plans or take actions to shape their growth and rural areas. One approach toward this is a more coordinated state response: you are not eligible for anything unless you do a regional or multi-municipal plan. We can't do it piecemeal, town-by-town.

There is a regional coordination component to comp plans that is in the state goals, but it is very "warm and fuzzy." Beth Della Valle noted it would be better if it were more measurable, more outcome oriented.

Rep. Suslovic reflected on the map of towns with growth caps handed out earlier in the day. Each town has done the best thing for their own interests in the short run. The problem is that, in the big picture, they have created a larger issue – they're the most unaffordable area in the state. We are failing a significant portion of our state's population – loss of economic development, lack of housing opportunities; environmental/resource lost... They're doing what is best for their constituents, but maybe it's the system that isn't meeting the needs of the people in Maine.

The Natural Resources Committee, under Resolve Chapter 34, is permitted to report out legislation related to the study during the second regular session. Beth Della Valle noted that there might be 15-20 changes to the Planning and Land Use Regulation recommended, some minor, some more substantive. If you believe that there is more in 1045 than just late reviews, that the late review element is symptomatic of the multiple statutory responsibilities, these changes would be justified under Chapter 34.

Beth Della Valle will meet with a subcommittee of the group, including Rep. Tobin, Rep. Suslovic, and Rep. McLaughlin and come to the next meeting with some recommendations.

Progress and News on a Statewide Building Code

Jeff Edelstein sits on a committee that is examining building and rehab code issues, statewide. Jim Adolf is on the OPLA staff serving the Business, Research, and Economic Development Committee, and is providing drafting assistance to the committee. They brought the Committee up to date on what has been happening in this committee.

Two bills addressing a statewide building code were folded into LD 1025 and carried over to the 2nd session. That bill has been the springboard for the committee's work. There have been various efforts to develop a statewide building code for the last 30 years or so. Working with a broad set of stakeholders over six months, the committee has developed a consensus set of recommendations. Before the issue of a rehabilitation ("rehab") code can even be considered, there has to be resolution of whether or not there will be a single building code – the rehab code is a subset of the building code.

A significant factor in the discussions (and disagreements) is because, nationally, there are two competing building codes, the National Fire Protection Association (known as the "life safety code") and the International Code Council (successor organization to BOCA). In Maine, 100% of municipalities that use a code use BOCA, although the fire marshal's office uses the NFPA code.

The resolution the group has right exists only if all the pieces of this recommendations package are in place. We have consensus in using the ICC codes – the International Residential Code (IRC) and International Building Code (IBC). IBC covers everything except one and two family construction; IRC covers one- and two-family dwellings – both use traditional standards. The choice of the code is just one piece of the consensus; the group has also discussed whether or not that code would be mandatory, if towns have to adopt the code, opportunities for amending the code locally, how to treat municipalities with codes already adopted, the continued use of NFPA codes by the fire marshal, etc.

This group has not been considering contractor licensing – only the choice of codes and issues around implementation. However, the consensus recommendations of the group are based on the assumption that contractor licensing is in place for one and two family dwellings.

Although the group has reached a delicate consensus, these agreements do not translate to the national level. The national organizations involved may not respect the agreement, and are likely to continue to exert pressure on the decision-makers.

The consensus recommendation on the residential code is bifurcated. It assumes that if the state adopts licensing and provides training and certification to IRC, then:

- (a) all one-two family buildings must be built to this code and the state must provide inspection – and therefore that it would be mandatory for all towns and not amendable; or

- (b) if state licensing only includes training and licensing, but not state inspection, then the municipalities maintain authority – the code would be voluntary in terms of adoption; communities can amend it (although there is a split opinion on what ‘amendable’ encompasses); enforcement of the code would be a local matter.

On the IBC, the recommendation isn’t tied to licensing. The recommendation is currently that the IBC code be fully voluntary and amendable by municipalities. Although voluntary, this would define the family of code, establish a state code model, and the education and training could start to bring everyone along.

The committee is drafting a report that will be submitted to the Business, Research, and Economic Development Committee. There will probably be a day of committee work sessions addressing the two bills related to building codes, as well as rehab code issues and plumbing code issues (if there is time).

Rep. Koffman suggested that in order to ensure that rehab codes become part of the picture, legislation proposed that if a town adopts a local building code, it shall adopt the rehab part of that code as well. Potential conflicts between the NFPA and BOCA rehab codes also exist, and would require a significant process to address. Finding a common ground between the two codes is possible, but it will take a line-by-line analysis and agreement, which could take a year. (New Jersey, Maryland, and Rhode Island have done this quite successfully.)

Rep. Mills reminded the committee that many towns have adopted BOCA building codes, but that those codes have not been kept up to date with the most recent amendments because of the cost of updating codes through BOCA and the political fight that it might create locally.

Peter Merrill commented that as difficult as the process is to address a single building and rehab code, it is well worth doing. Every developer the Maine State Housing Authority (MSHA) talks to won’t touch an existing structure in downtown Augusta.

Next Steps

The next meeting of the CPAC will be November 5, 9-12 in the Natural Resources Hearing Room.

Proposed agenda items include:

- Preliminary report back from the barriers to affordable housing subcommittee with top priorities;
- Preliminary report back from a subcommittee convened by Beth Della Valle with initial recommendations;
- Presentation / discussion on issues of school siting;
- Check-in on MDOT’s experiences implementing access management;
- Check-in on the Bureau of General Service’s experiences in placing office building location in locally designated growth areas; and, time permitting
- Testimony/presentation from Rep. Sean Faircloth on the package of bills he has introduced linking public and community health.